



# District of Columbia Sentencing and Criminal Code Revision Commission

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## FULL COMMISSION MEETING MINUTES

Tuesday, May 24, 2011  
Judiciary Square, Room 1117  
Washington, DC

### Attendance:

Frederick Weisberg	Dave Rosenthal	Courtnei Burleson
Ramsey Johnson	Jennifer Seltzer Stitt	Megan Collins
Adele Harrell	Michael Anzallo	Thurman Sanders
Ronald Gainer	Julie E. Samuels	Mia Hebb
Thomas Kane	Cedric Hendricks	Ken Cowgill
Laura Hankins	Patricia Riley	Megan Murphy
Barbara Tombs-Souvey	Stephen Husk	

- I. Barbara Tombs-Souvey Call to order at 5:00 p.m
- II. Minutes from the Thursday, March 31, 2011 meeting were approved.
- III. Director's Report-Informational Item, Barbara Tombs-Souvey

**Agency Budget Update:** Barbara Tombs-Souvey discussed the agency's FY 12 budget and indicated that the agency's operating expenses were not reduced. The agency received a slight increase over FY 11 which provided funding for the continuation of Ken Cowgill's position and agency IT projects. She also explained OCA's current NPS spending freeze for the remainder of FY 11 and her intention to appeal the spending freeze to ensure adequate funding for the Commission's remaining operational expenses for this year.

**New Paralegal Staff Position:** Barbara Tombs-Souvey informed the Commission of the recent posting of a new Paralegal Specialist position within the agency. This position will assist with the Criminal Code Revision Project as well as with legal and guidelines-related research. She distributed copies of the position announcement to the members and asked that they circulate the announcement to anyone they felt would be interested in the position. Ken Cowgill will forward an electronic version of the announcement to members also.

**Summer Interns:** Barbara Tombs-Souvey and Ken Cowgill reported that the agency has enlisted three law school interns for this summer. The interns will have staggered start dates throughout June and July and will assist with the Criminal Code Revision Project.

**IV. Public Outreach Committee Update – Informational Item, Courtni Burleson**

Courtni Burleson briefly updated the Commission on the Committee’s progress. She distributed the final version of the Needs Survey that will be sent out in the upcoming weeks. She also distributed a draft of a General FAQ that will cover general information about the Guidelines and the Commission. She asked the members for their feedback by June 6<sup>th</sup>.

**V. Discussion of Guideline Compliance- Discussion Item, Barbara Tombs-Souvey**

**Definition of Compliance:** Barbara Tombs-Souvey introduced the topic of defining compliance in guidelines and distributed a summary of compliance definitions by state. She stated that the District of Columbia reports 96-99% compliance. However, most states report a 75-80% compliance rate with an array of departures accounting for the remaining 20-25% of the sentences. The inclusion of departures within the definition of a “compliant” sentence under the District’s Voluntary Sentencing Guidelines makes it more difficult to identify specific portions or aspects of the guidelines that may need to be reviewed or modified.

Commission members offered historical context for the current definition of compliance. Judge Johnson also explained the development of departure principles. Pat Riley clarified that following the rules set forth under the guidelines makes a sentence compliant and that going outside the box is still considered a compliant sentence if a departure factor is provided. Only sentences imposed outside the box when a departure factor or reason is not provided are considered non-compliant. Barb Tombs-Souvey explained how different definitions of compliance affect data tracking and reporting, as well as evaluating the use of the guidelines. Adele Harrell added that there are many things to learn from breaking down these categories of compliant and non-compliant sentences.

The Commission discussed the option of changing the terminology in reporting compliance and approved the categories of within-the-box sentences, authorized departures and non-compliant sentences.

**Count versus Case:** Barbara Tombs-Souvey inquired about the historical context of reporting data by case and not by count. She shared her experiences with several states on this issue and the problems of reporting by count when tracking compliance for cases with sentences that run concurrent. She also explained that reporting by count rather than by case has the potential to skew the data, especially when presenting demographic information. Pat Riley explained that sentences are imposed by count and this is reflected in the Commission’s reporting but suggested that the Commission report by both count and case.

Commission members discussed the potential advantages of reporting by case. Judge Weisberg stated that length of sentence information is also lost by not reporting by case. However, there is some information that is better presented by count and Adele Harrell pointed out that different audiences will have different preferences. Thomas Kane also offered information on the way data is reported in the federal system. The Commission agreed that data analysis and reporting should include analysis by case as well as by count and by offender.

**VI. Criminal Code Revision Project – Discussion Item, Barbara Tombs-Souvey and Ken Cowgill**

***Project Funding Issues:*** Judge Weisberg briefly discussed the results of the budget hearing indicating the Council’s acknowledgment that the agency was under-budgeted and under-staffed for a project of this nature. The project needs additional staffing but the resources to supplement its current staffing level are just not possible at this time. However, the project will now include the services of law school interns and a full time paralegal, which should provide some assistance to the project director.

***Proposed Fine Proportionality Act:*** Judge Weisberg updated the Commission on the Council’s Fine Proportionality Amendment Act introduced by Councilmember Mendelson. The Council has scheduled a hearing on the bill for May 31, 2011. Pat Riley added that the U.S. Attorney’s Office will be requesting conforming amendments for Titles 22, 48 and 50 of the D.C. Code.

***Modifying Code Revision Approach:*** Ken Cowgill discussed his plan to utilize the three interns and the new paralegal to accomplish a set of discrete objectives, including a clean-up of the criminal code starting with Arson. Ron Gainer suggested starting with associated offenses for Destruction of Property rather than Arson as it may be a deliverable to the Council. Ken Cowgill explained that he chose to start from the beginning of the alphabet (Arson) to see what would be involved and how the interns would be best utilized but he estimates that all of Title 22 could be addressed over the summer. Judge Weisberg suggested that Model Penal Code concepts could be considered in this process. Pat Riley cautioned that changing the substance of the statutes could have implications, including the undesirable result of re-litigation.

Dave Rosenthal suggested that criminal code revision could include a review of outdated crimes or an enactment of the Code. Pat Riley suggested addressing the Theft and White Collar Crime Act as a discreet deliverable under code reform.

**VII. Criminal History Scoring Issue – Discussion Item, Courtni Burlison**

***Prior Out of State Convictions for Offenders under 18 Years of Age Classified as Juvenile Adjudications in D.C.:*** Courtni Burlison opened up discussion on scoring prior out of state, adult convictions for offenders who were under 18 years of age at the time of the offense. For these cases, the Guidelines are not clear whether they are scored as adult convictions or juvenile adjudications. Judge Weisberg stated that D.C.’s code designates a child under 18 as a minor unless he or she is charged with certain crimes.

The Commission discussed several options for how these convictions should be scored, particularly for 16 and 17 year olds. Dave Rosenthal, Pat Riley and Laura Hankins provided additional information regarding when and how other jurisdictions prosecute juveniles as adults as well as D.C's own charging practices. The issue was referred to Committee to recommend a policy in this area.

Adjourn: 6:45 pm

NEXT MEETING:

Tuesday, June 21, 2011, One Judiciary Square (441 4<sup>th</sup> St., NW), 11<sup>th</sup> Floor.